

60130-1669  
02MRA0574**REMARKS**

Claims 1-19 remain pending in this application with claims 15-19 allowed, 6-8,13 and 14 objected to and claims 1-5 and 9-12 rejected.

Claims 1, 4 and 5 were rejected as being anticipated by Fry (US 4,223,910). In the last office action, the Examiner was unclear as to what and where the first and second segments are. As is shown in Figure 2, and generally indicated by the reference numeral 36, the first and second segments are end portions of the axle housing. Further, the Examiner indicated that it was unclear as to if it is the axle housing or torque plate that is mounted at least partially between the first and second plates and for this reason claim 1 is broad enough that Fry is considered to read on them. However, this simply is not the case. Fry does not include a torque plate fixed to each of the first and second segments along a portion of the axle housing *at least partially between the first and second plates*.

In Fry, the torque plates (part 16, as read by Examiner) are not mounted between the plates (part 15). Further, the office action has not identified and there is no structure in Fry that would meet this limitation. Instead, the Examiner merely states that the claim is broad. As appreciated, a claim can only be anticipated if each and every element is present in the prior art reference. In this instance, Fry does not meet the limitation of the torque plate fixed to each of the first and second segments along a portion of the axle housing mounted at least partially between the first and second plates. Accordingly, Applicant requests reconsideration and withdrawal of this rejection.

Claims 2, 3 and 9 were rejected as being obvious over Fry modified in view of Pringle (U.S. 4,065,153). Claim 2 requires an opening for a brake assembly, and claim 9 requires a brake assembly mounted to each torque plate. Fry does not disclose a brake assembly. Examiner states that Figure 2 of Pringle shows an unlabelled brake assembly, although none seems to be present. Examiner alludes to the possible inclusion of a brake drum. However, no such structure is described or identified in the specification.

Further, even accepting that the structure in Figure 2 of Pringle is a brake drum, this still does not disclose or suggest the claimed limitations of claim 2, and 9. Claim 2 requires an opening for mounting a brake assembly within the torque plate. A brake drum does not disclose or suggest an opening in a torque plate. Further, Claim 9 requires a brake assembly mounted to each of the torque plates. A brake drum is never mounted to a torque plate. The structure in Figure 2 of

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Pringle therefore cannot disclose or suggest attaching of a brake assembly to a torque plate as is required by claim 9. Accordingly, the proposed modification of Fry in view of Pringle cannot disclose or suggest all the limitations of claims 2,3 and 9. For this reason this rejection is improper and must be withdrawn.

Claim 10, 11 and 12 were rejected as being obvious over Fry modified in view of Pringle. Claim 10 requires forming a housing having a first plate spaced apart from a second plate to define an opening between first and second segments and at least a partially open bottom, welding of a torque plate to first and second plates over open end segments, and mounting of a brake assembly to each of the torque plates. Pringle and Fry do not disclose or suggest mounting a brake assembly to the torque plates as was discussed above with regard to claims 2, 3 and 9.

Further, even accepting *arguendo* Examiner's reading of Fry and Pringle, the proposed modification does not disclose or suggest any structure that meet the requirement of welding the torque plate transverse to first and second plates over open segments. Further, Fry and Pringle do not disclose or suggest forming open segments, and the office action does not identify any elements or structure that would meet these limitations. The last office action made the rejection of claims 10,11, and 12 final but offered no further explanation or response concerning this rejection. This rejection is not proper as it fails to disclose or suggest the limitations required by claim 10. For these reasons, this rejection must be withdrawn.

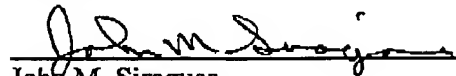
Claims 15-19 were allowed. Claims 6-8, 13 and 14 were objected to as being dependent on a rejected base claim. As the rejections to independent claims 1 and 10 are believed improper and overcome, Applicant has not amended claims 6-8, 13 and 14 at this time.

All objections and rejections having been addressed, it is respectfully submitted that the present application is in condition for allowance, and a Notice to that effect is earnestly solicited. Applicant believes that no additional fees are necessary, however, the Commissioner is authorized to charge Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds for any additional fees or credit the account for any overpayment.

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Respectfully Submitted,

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